

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

SCHENKEL'S ALL STAR DAIRY, INC. and
SCHENKEL'S ALL STAR DELIVERY, INC.,
A Single Employer¹

and

Case 25-RC-10067

INDIANA JOINT BOARD, RWDSU COUNCIL,
UFCW, AFL-CIO

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held November 27, 2001, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

¹ Administrative notice is taken of the records of the Indiana Secretary of the State which indicate that the Employer is comprised of two corporations. At hearing the Employer indicated that it preferred to be treated as a single entity. Absent evidence indicating that to do so would be inappropriate, and absent any objection from the Petitioner, it is concluded that Schenkel's All Star Dairy, Inc. and Schenkel's All Star Delivery, Inc. are a single integrated enterprise.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Huntington, Indiana facility, including shipping and receiving employees, filler operators, machine operators, maintenance employees, garage mechanics, cooler employees, laboratory technicians, route delivery drivers and semi-truck drivers; BUT EXCLUDING all managerial employees, clerical employees, salesmen, guards and supervisors as defined in the Act, and all other employees.²

The unit found appropriate herein consists of approximately 91 employees for whom no history of collective bargaining exists.

I. STATEMENT OF FACTS

The Employer, Schenkel's All Star Dairy, Inc. and Schenkel's All Star Delivery, Inc., (hereinafter jointly referred to as the "Employer") is an Indiana corporation engaged in the processing and distribution of milk, orange juice and other juice beverages, as well as the distribution of other dairy products. Its Indiana facilities include a corporate office, a milk processing plant and distribution center located in Huntington, Indiana, as well as distribution depots in Fort Wayne and Plymouth, Indiana. Approximately 150 dairies provide raw milk to the Huntington facility where the milk is processed and packaged. Production employees manufacture the plastic jugs in which the milk is packaged. The facility also processes orange juice from juice concentrate and processes some sugar-based fruit drinks. The Employer purchases from outside vendors some dairy products such as sour cream, cottage cheese, and yogurt. These are warehoused at the Huntington facility and disbursed from there to the Fort Wayne and Plymouth depots. Some of the products are warehoused in coolers at the Huntington plant for future delivery to customers, while other products are loaded into tractor trailers (driven by semi-truck drivers) and route delivery trucks. Route delivery drivers, who are employed at Huntington as well as Plymouth and Fort Wayne, are assigned permanent routes comprised of

² The Employer for the first time in his brief clearly articulated its position that route vacation relief employees, also referred to as route skippers and route supervisors, should be included in the unit found appropriate herein. The primary function of the relief drivers is to substitute for route delivery drivers when they are on vacation or otherwise absent from work. Relief drivers also make special deliveries to customers who may be in need of a product on a day they are not scheduled for a regular delivery. The record indicates that approximately 70% of the time of the relief drivers is spent performing such relief functions. They also receive the same fringe benefits as all other company employees. The record does not reflect the functions relief drivers perform during the time they are not substituting for regular drivers; nor does the record describe any additional characteristics of this group of employees. Since it appears that relief route drivers may share a community of interest with unit members, but there is insufficient record evidence from which to make a conclusive finding to such effect; and since it appears that only two such positions exist at the Huntington facility, it is concluded that the relief drivers may vote subject to challenge at the election ordered herein. Accordingly, it shall be the responsibility of any party who believes that relief drivers should not be members of the unit, to challenge their voting eligibility at the election ordered herein.

restaurants, schools, stores and other retail establishments to which they make deliveries and from which they solicit orders. Semi-truck drivers, who are employed only at Huntington, may also deposit a full or partial trailer load of product at the stores of retail customers, but it appears that the bulk of their products are transported by the semi drivers to the Plymouth and Fort Wayne depots. There the semis are unloaded, product is stored in coolers and subsequently loaded into route delivery trucks located at each depot, for ultimate delivery to customers located within a five-state area.

There is no history of collective bargaining involving any of the three facilities. The Petitioner seeks an election within a unit comprised of the approximately 91 employees employed at the Employer's Huntington facility. The Employer contends that only a multi-location unit consisting of employees at its Fort Wayne and Plymouth depots, along with the Huntington facility, is an appropriate unit, on grounds that the facilities are fully integrated. In addition, the Employer urges that its route accounting clerks be included in the unit on grounds that they, too share a community of interest with members of the petitioned unit. The Petitioner, however, asserts that the single facility unit it seeks is presumptively appropriate; that record evidence fails to overcome this presumption; and that the route accounting clerks are office clerical employees who lack a community of interest with unit members.

A total of approximately 120 persons are employed at the Huntington facility. Included among positions which exist at the facility are that of the company's President, a Vice President of Operations/Controller, a Facilities Manager, a Manager of the garage and mechanics, Route Supervisors, Cooler Supervisors, Plant Supervisors, salesmen, filler and machine operators, shipping and receiving personnel, production employees, mechanics, field men, semi-truck drivers, route delivery drivers, and clerical employees. The President has ultimate responsibility for all operations of the two corporations. The Vice President of Operations, who is also the corporate controller, the Facilities Manager, the Manager of the garage and mechanics, the Route Supervisors, Cooler Supervisors³, and salesmen all report directly to the President. The parties are in agreement that persons who occupy these positions are managerial employees or statutory supervisors who should not be included in any unit found appropriate herein.⁴ The production employees, mechanics, cooler employees, and laboratory employees⁵ are paid hourly. There are 8 to 10 route delivery drivers and 40 to 45 semi-truck drivers employed at the Huntington facility. The route delivery drivers are paid a commission or a fluctuating workweek salary. The semi-truck drivers are paid a fluctuating workweek salary.

There are two offices located within the Huntington facility which constitute the corporations' headquarters. In one office are located two order entry clerks who contact customers, obtain their milk orders for the next day, and who enter these and other orders which

³ The parties expressly stipulated that the Cooler Supervisors are statutory supervisors, and the record supports this stipulation.

⁴ The parties are in agreement that the sales persons should also be excluded from the unit.

⁵ The parties stipulated that the laboratory technicians should be included in the unit, and the record supports this stipulation.

have been sent by facsimile transmission, into the Employer's computer system. Another clerical posts accounts receivables and the four remaining clericals, called "route accounting clerks,"⁶ process documents returned from drivers and invoice customers. The route accounting clerks mainly use personal computers and calculators. The order entry clerks and the accounts receivable clerk also use personal computers. The office of the Vice President of Operations is located in the second office, in addition to a clerical employee who performs general ledger functions and who processes farm payroll. A second clerical also handles farm payroll in addition to accounts payable functions; a third clerical serves as a receptionist and a fourth performs payroll and human resource-related work. These clericals also use personal computers to perform their tasks.

In respect to the disputed route accounting clerks, one of their primary functions is to reconcile orders and delivery documents which the route delivery drivers drop off at the Huntington facility at the end of their routes each day. Drivers complete their paperwork in a drivers room which is adjacent to the accounting clerks' office. They give their paperwork to the clerks through a window before departing for the day. The clerks then check the documents to insure they are completed correctly. These documents include pre-trip truck inspection reports, case count reports, DOT logs, and end-of-day reports. The clerks also reconcile each trip's activity, to insure that all customers were properly charged for items delivered; that no product was delivered without a price; and that the correct product was delivered. If, during the course of a day, a clerk has a question concerning a document turned in by a route driver, the clerk may leave a message with a customer who will be receiving a delivery that day, to have the route driver call the clerk, or she may leave a note for the driver upon his return to the facility. Thus, contact between the route drivers and route accounting clerks occurs briefly in person at the end of each work day, sometimes telephonically from the field, or in writing. According to the testimony of the Vice President of Operations, approximately 65% of the route accounting clerks' time is spent reconciling driver paperwork. The balance of their time is spent engaged in accounts receivable functions; namely, preparing and mailing out customer invoices, as well as pricing functions. The accounting clerks are hourly paid within a range of \$8 to \$12 per hour, which is less than the pay range of production and maintenance employees. Unlike members of the petitioned unit, the route accounting clerks are supervised by the Vice President of Operations/Controller.

The Fort Wayne depot is located approximately 25 miles from the Huntington facility. Fort Wayne is staffed by approximately 23 employees, consisting of a Manager, mechanic, route vacation relief employees, route delivery drivers, cooler personnel, and clerical employees. This Manager is responsible for the overall operations of both the Fort Wayne and Plymouth facilities.⁷ There are two clerical employees at Fort Wayne who answer telephones and process paperwork. They work in an office apart from that of the Manager. They are paid hourly. One

⁶ The actual reporting structure of the route accounting clerks is not clear from the record since it appears they report to the Vice President of Operations on a regular basis, but for limited purposes not identified in the record, they may also report to persons in the production and sales areas.

⁷ Since the Fort Wayne Manager possesses the power to hire and fire, he is a statutory supervisor.

of the clerical employees performs functions similar to those performed by the route accounting clerks at Huntington.

Several route drivers are domiciled at the Fort Wayne facility. The route drivers are paid on a commission basis except for two drivers who are paid a salary plus commission because they deliver seasonal product, such as ice cream. Ten of the Fort Wayne route drivers deliver only milk and other dairy products; two drivers deliver ice cream products only; and one driver delivers a combination of both.⁸ Fort Wayne is the only facility with ice cream routes. Part of the ice cream routes cover the same geographical territory as the Huntington and Plymouth milk routes and serve some of the same customers serviced by route delivery drivers domiciled at the two depots.

The Huntington corporate office provides centralized support services for the three facilities. Driver records for Huntington and Plymouth are maintained at the Huntington facility. The driver records for Fort Wayne are being consolidated and moved to the Huntington facility. All payroll checks are processed by an outside company and then either the checks or a direct deposit remittance advice arrives at the Huntington facility and is disseminated to the Fort Wayne and Plymouth facilities. Insurance application information for all employees is maintained at the corporate office. All customer account files are also maintained at the office. The employees of both corporations are eligible to receive the fringe benefits of the Suiza Flex Benefits Plan,⁹ which is administered from the corporate office. Labor relations policy applicable to all employees is also centrally administered. The three facilities are connected by modem and a "quick dial" telephone extension.

The Plymouth depot is located approximately 55 miles from the Huntington facility. The Plymouth depot is staffed by approximately 10 employees, consisting of a Manager, a sales person, a cooler employee, a route vacation relief employee, route delivery drivers, and clerical employees. The Manager is responsible for the day-to-day operations of the depot, but he reports to the Manager of the Fort Wayne depot who has ultimate responsibility for both locations. The record indicates that the Plymouth Manager is a supervisor within the meaning of Section 2(11) of the Act since he effectively recommends discipline. The receptionist reports directly to the Manager. The receptionist is paid hourly. Part of the receptionist's work includes work similar or to that performed by the route accounting clerks in Huntington. The route delivery drivers are paid on a commission basis.

II. DISCUSSION

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to

⁸ The record is not clear whether there are 12 or 13 route delivery drivers in Fort Wayne.

⁹ The Suiza Flex Benefits Plan includes the following benefits: medical, dental, vision, short-term disability, long-term disability, life insurance, optional life insurance, a paid time off program, employer assistance program, tuition reimbursement, and 401(k) retirement plan.

employees the fullest freedom in exercising the rights guaranteed by the Act," NLRB v. Action Automotive, Inc., 469 U.S. 490 , 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit, American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988). In the instant case, the parties have agreed that any unit will include production and maintenance employees, shipping and receiving employees, maintenance employees, mechanics, cooler employees, laboratory technicians, route delivery drivers and semi-truck drivers employed at the Huntington facility. Those employees in Fort Wayne and Plymouth who occupy the same or similar classifications are in dispute. In addition, the proper unit placement of all route accounting clerks is in dispute.

When an employer operates multiple facilities, it is well established that a single-facility unit is presumptively appropriate for purposes of collective bargaining, unless a functional integration between two or more of the facilities can be shown, Globe Furniture Rentals, Inc., 298 NLRB 288 (1990). The party seeking to rebut the presumption of a single facility unit must show that the day-to-day interests of the employees of one facility have merged with those of the other facility, Beckett Aviation Corporation, 254 NLRB 88, 89 (1981). To determine whether the presumption has been negated, the Board analyzes such factors as the centralized administration and control of labor relations, the skills and work functions of the employees, the commonality of daily supervision, the similarity of employees' terms and conditions of employment, the extent of operational and employee interchange, and the geographical proximity of the facilities, D&L Transportation, Inc., 324 NLRB 160, 161 (1997); Globe Furniture Rentals, Inc., *Supra*. The Board has specifically noted that if employees from different facilities are not integrated, a multi-location unit is not appropriate, Albert Lea Cooperative Creamery Assn., 119 NLRB 817 (1957).

In the present case, there exists substantial centralized administration of the operations of the three facilities, and employee benefits are uniform for all corporate employees. The skills and work functions of some of the employees such as some clerical employees and the route delivery drivers employed at each facility, are similar, while the functions performed by other employees are not. For example, there are substantially different job classifications at the Huntington facility than exist at Plymouth and Fort Wayne because substantially different functions are performed there. While Huntington is both a manufacturing plant and distribution depot, the other locations are distribution depots only. In addition, other factors such as the local supervision, the relative autonomy of that supervision, the absence of meaningful contact and interchange between the employees of the three locations, and the geographic distance between the facilities also indicate the absence of a community of interest among the employees of the three facilities. For example, each facility has a Manager who oversees its day-to-day operations. Although the Fort Wayne Manager exercises oversight functions over the Plymouth depot, he has no authority over Huntington employees. Thus, there is no common supervision of employees at Huntington and the two depots.

The record reflects minimal, if any, contact between unit employees and those who work in Fort Wayne and Plymouth. The Huntington semi-truck drivers, who transport products to Fort Wayne and Plymouth, interact with employees from these facilities on a limited basis. With the assistance of cooler personnel in Fort Wayne and dockmen in Plymouth, the drivers unload their

trucks. Although the drivers work with dockmen and cooler employee, there is no evidence that the drivers, dockmen, or cooler employees interchange job functions. Although there are drivers from Fort Wayne who service ice cream routes which overlap the geographical territories of drivers from Huntington and Plymouth, there is no evidence that this joint servicing of customers involves any contact between the drivers.

Other members of the petitioned unit have no contact with employees of the two depots. There is no evidence that production and maintenance employees, lab technicians, shipping and receiving employees, cooler employees or mechanics at Huntington have any contact with any employees of the depots. The only employees out of the approximately 91 employed within the petitioned unit who have contact with Plymouth or Fort Wayne employees are the semi-truck drivers who make daily deliveries to the depots. There is vague testimony concerning employee transfers, but the testimony does not indicate when transfers may have occurred; which facilities were involved; which job classifications were involved; and whether the transfers were temporary or permanent. The record indicates only that infrequently some office clerical employees may have worked at different locations during transitional periods of time, and that some supervisors may have substituted for absent employees at a different facility. There is no corporate-wide seniority system.

Accordingly, it is found that the evidence fails to overcome the presumptive appropriateness of the single facility unit, and it is therefore concluded that the employees within the petitioned unit who are employed only at the Employer's Huntington, Indiana facility, constitute a unit appropriate for purposes of collective bargaining.

Nor does the preponderance of record evidence indicate that the route accounting clerks share a sufficient community of interest with members of the unit found appropriate herein, to require their addition to the unit. Employees who perform duties customarily performed by office clerical employees such as processing accounts payable and accounts receivable information; preparing customer invoices; and who perform these functions in an office environment away from the production floor, are traditionally excluded from a unit of production employees, In the Matter of Enid Co-Operative Creamery Assn., 79 NLRB 444 (1948), see E.H. Koester Bakery Co., Inc., 136 NLRB 1006 (1962). Office clerical employees' principal functions involve general office operations, Cook Composite & Polymers Co., 313 MLRB 1105 (1994). Whereas, plant clerical employees' principal functions are related to or integrated with a production process, Hamilton Halter, 270 NLRB 331 (1984).

In the case at hand, route accounting clerks perform customer invoicing functions as well as delivery reconciliation duties. They check the drivers' paperwork for accuracy, and reconcile their daily trip activity, verifying that all customers are in the database, preparing and mailing invoice statements to customers, and ensuring that pricing is correct. The clerks spend about 65% of their time performing reconciliation functions and 35% involving accounts receivable duties. The route accounting clerks are paid between \$8.00-\$10.00 per hour, which is lower than the range paid unit members, but within the range paid other clerical employees. All of the clerical employees at the corporate office work in offices separate from the work areas of member of the petitioned unit. The record indicates that contact between the route delivery and semi-truck drivers and route accounting clerks is minimal. The clerks communicate with the

drivers in person, by phone, or in writing. The route accounting clerks have different supervision than members of the proposed unit. There is no evidence that the drivers' paperwork processed by the route accounting clerks, in part or in whole, facilitates production, or that they perform any other duties directly related to the production process. There is also no evidence that the clerks interchange job duties with any production employees.

For all of the above reasons, it is concluded that the route accounting clerks do not share a community of interest with members of the unit found appropriate herein, and accordingly, they shall be excluded from the unit.

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees in the unit who are engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Indiana Joint Board, RWDSU Council, UFCW, AFL-CIO.

IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

V. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **December 14, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 21, 2001.

DATED AT Indianapolis, Indiana, this 7th day of December, 2001.

/s/ [Roberto G. Chavarry]
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